IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI EASTERN DIVISION

LESLIE YOFFIE,)	
Plaintiff,)	
v.)) CASE	NO.
BAYER HEALTHCARE, LLC,)	
Defendant.))	

DECLARATION OF RICHARD KLOENNE

- I, Richard Kloenne, declare under penalty of perjury as follows:
- 1. I am over eighteen (18) years of age and am in all respects competent to execute this Affidavit. The facts stated herein are true, known to me of my personal knowledge, and if called as a witness, I could and would competently testify thereto.
- I am a Senior Manager, Market Research, employed by Bayer Healthcare, LLC
 ("Bayer"). Bayer markets Bayer Aspirin.
- 3. In my position with Bayer, I am familiar with, use and regularly rely on certain data concerning retail sales of Bayer Aspirin, as well as other products, which Bayer obtains from SymphonyIRI Group ("IRI"). IRI is a company that is in the business of collecting data on retail sales of consumer products from a significant majority of retailers in the United States, including the State of Missouri. The data IRI collects are from checkout scanner reports at individual retailers which are then aggregated in a database. IRI's data collection captures the majority of retail sales of Bayer Aspirin. Based upon the scanning data collected by IRI, IRI projects the retail value of the sales of Bayer Aspirin and other products. I and others within



Bayer regularly use and rely on these projections in providing market research reports to Bayer.

Bayer itself does not collect retail sales data on the sale of Bayer Aspirin other than through IRI.

- 4. There are several products that Bayer considers to be "Bayer Aspirin," including Genuine Bayer Aspirin, several Bayer Aspirin regimen products, several extra strength Bayer Aspirin products and Bayer Advanced Aspirin products. I have obtained data from the IRI database of retail sales of these Bayer Aspirin products within the State of Missouri for the period from November 2007 to the present. The IRI database has added retailers over this period of time but still does not cover all retailers and, as a result, the total of Bayer Aspirin sales from the IRI database is less than the total of actual retail sales. For example, Costco and certain other retailers do not participate in the IRI database and Wal-Mart has only provided data for the period of 2009 to the present. Although the database is incomplete for all retail sales, based upon my knowledge and experience in my position with Bayer, the database provides a conservative estimate of the retail sales value of Bayer Aspirin sales within the State of Missouri during this period.
- 5. Based on the data I obtained from IRI, a conservative estimate of the retail value of Bayer Aspirin sales in the State of Missouri, during the period from November 2007 to the present, subject to the qualifications stated above about certain data being unavailable, is approximately \$19,800,000.

6. I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was signed by me on this 13th day of December, 2012.

Further affiant sayeth not.

Richard Kloenne

Richard Kl

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